Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

DECEMBER TERM, 1977

No. 77-836

UNITED STATES OF AMERICA, *Petitioner*

v.

SMITH JOHN and HARRY SMITH JOHN, *Respondents*

On Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENTS' BRIEF ACQUIESCING IN THE PETITION FOR CERTIORARI

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December 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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For the reasons set out herein, respondents do not oppose the Petition for Certiorari filed by the United States on December 10, 1977.

REASONS FOR NOT OPPOSING CERTIORARI

As the Petition shows, respondents were charged with felony assault in both the federal district court and in a Mississippi State court based on the same events.

In the federal proceeding they were acquitted of felony assault but convicted of misdemeanor assault. They appealed but did not challenge the felony jurisdiction of the federal court.* However, the Court of Appeals *sua sponte* requested briefing jurisdiction pursuant to the Major Crimes Act, 18 U.S.C. § 1153. Both parties argued in favor of federal jurisdiction, but the court ruled to the contrary, and review of that decision is sought here. Respondents' federal misdemeanor sentence has now been fully served.

After the federal trial, respondents were charged with felony assault in the State courts based on the same events. They unsuccessfully opposed State court jurisdiction and were convicted of felony assault and sentenced to two years in the Mississippi State Penitentiary. That sentence has not been served, as respondents have remained free on bond pending review. They appealed to the Mississippi Supreme Court which affirmed, ruling expressly that there is no federal jurisdiction over the Mississippi Choctaw Reservation. 347 So.2d. 959 (Miss. 1977). Respondents then appealed to this Court, Jurisdictional Statement docketed October 18, 1977, as No. 77-575. In that Jurisdictional Statement, respondents contend that the federal courts have exclusive jurisdiction over the events at issue.

For these reasons, respondents do not oppose the United States' Petition for Certiorari. Because the above issue is the same in this case as in No. 77-575, the Court can obtain an opposing view on this Peti-

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* The actual grounds for respondents' appeal were not reached by the Court of Appeals, so they need not be considered by this Court. See, Petition p. 4.

tion by referring to the Motion to Dismiss filed by the State of Mississippi in No. 77-575 on December 14, 1977.

Respectfully submitted,

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petitioner's brief